BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F206001

DARRELL CAUDLE	CLAIMANT
HATFIELD LUMBER	RESPONDENT
LMA-ARKANSAS, INSURANCE CARRIER	RESPONDENT

OPINION FILED AUGUST 4, 2003

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Fort Smith, Sebastian County, Arkansas.

Claimant represented by GREGORY GILES, Attorney, Texarkana, Arkansas.

Respondents represented by ROBERT HENRY, III, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on May 6, 2003, in Fort Smith, Arkansas. A pre-hearing order was entered in this claim on March 27, 2003. This pre-hearing order set out the stipulations offered by the parties, and outlined the issues to be litigated and resolved at the present time. A copy of this pre-hearing order was made Commission's Exhibit No. 1.

The following stipulations were offered by the parties and are hereby accepted:

1. On May 8, 2002, the relationship of employee-self insured employer-third party administrator existed between the parties.
2. The appropriate weekly compensation rates are $321.00 for total disability and $240.00 for permanent partial disability.
3. On May 8, 2002, the claimant sustained a compensable injury to his right knee, nose, and back.
4. There is no dispute over the payment of accrued medical expenses.
5. There is no dispute over the payment of temporary disability benefits through September 7, 2002.

By agreement of the parties, the issues to be litigated and resolved at the present time were limited to the following:

1. Whether the claimant's current low back difficulties are causally related to the compensable low back injury of May 8, 2002.
2. The claimant's entitlement to additional medical services fo his current low back difficulties.
3. The claimant's entitlement to additional temporary total disability from September 8, 2002 through a date yet to be determined for his knee and back injury.
4. Appropriate attorney's fee.

In regard to these issues, the claimant contends that he is entitled to additional medical treatment for his back injuries. Specifically, his family doctor at the Ouachita Family Practice Clinic and Dr. James Mulhollan, have recommended that he see an orthopaedic surgeon for further evaluation of his back. Claimant also contends that he is entitled to additional temporary total disability benefits while he undergoes treatment for his continuing back problems.

In regard to these issues, the respondents contend they have paid all benefits to which the claimant is entitled.

DISCUSSION

____I. COMPENSABILITY OF THE CLAIMANT'S CURRENT BACK COMPLAINTS

The first issue requiring resolution concerns the question of whether the claimant's current low back difficulties are "compensable", either in the form of a reoccurrence, continuation, or progression of his admittedly compensable low back injury of May 8, 2002, or in the form of a compensable consequence of his admittedly compensable right knee injury of May 8, 2002. In order to fall into either of these categories, the claimant must prove the existence of a causal relationship between his current episode of low back

difficulties and either the compensable low back injury of May 8, 2002, or the compensable right knee injury of the same date.

The record indicates that the claimant had sustained a previous injury to his back while in the employ of the respondent on March 18, 2002 (apparently only days after he began his employment). This injury occurred when he was stepping out of the cab of his truck and slipped. He fell backward off the cab of the truck and landed on his back.

The claimant testified that he initially consulted Dr. Kevin Rudder, an orthopaedic surgeon, for treatment of this injury. Although both parties have introduced over I50 pages of medical reports and records, neither party has tendered the records of Dr Rudder concerning his initial evaluation of the claimant. The first medical evidence dealing with this injury consists of the results of an MRI study performed by Dr. Mark Robbins (at Dr. Rudder's request), on March 22, 2002. This study was interpreted as revealing mild anterior compression fractures of the T12 and L1 vertebral bodies, various degenerative arthritic changes at multiple levels of the claimant's lower thoracic and lumbar spine, and a small central disc bulge at L5-S1. Dr. Robbins was also of the opinion that the compression fractures were not acute and pre-existed the incident on March 18, 2002.

The only other medical record dealing with this injury is Dr. Rudder's office notation of April 19, 2002. The claimant was seen on that date for follow up for his back injury. Dr. Rudder notes that, at that time, the claimant had "actually improved quite significantly" with only some residual pain to palpitation under the gluteal region. He further related that the claimant had undergone an MRI study and a bone scan. Although the radiologist's interpretation of the bone scan has not been introduced, Dr. Rudder indicates that both of these studies were negative for a recent or acute injury. Dr. Rudder released the claimant to return to regular employment and essentially discharged him from further care. In this report, Dr. Rudder also expressed some concern that the claimant was taking excessive pain medication. According to Dr. Rudder's calculations, the claimant would have been

taking in the area of 17 pain pills per day.

The claimant returned to work, at regular duty, and sought no further medical treatment for back difficulties, until the motor vehicle accident on May 8, 2002. According to the claimant's testimony, he experienced no problems with his lower back during this time.

Immediately following the employment related motor vehicle accident on May 8, 2002, the claimant once again complained of difficulties with his back. He also complained of pain in his right leg, in the area of the anterior thigh (between the hip and knee). He further voiced complaints with his right elbow and right lower abdomen. The pain diagrams completed by the claimant at the emergency room of St. Francis Hospital on May 8, 2002, show that the pain in his lower back was above the "belt line". This location would appear to be somewhat higher than the area of his complaints following the March, 2002 injury, but more in the area of the old compression fractures at T12-L1.

X-rays taken of the claimant's thoracic spine in the emergency room of St. Francis Hospital were interpreted as demonstrating a "significant" anterior compression fracture deformity of the T12 vertebral body. The previous MRI study, on March 22, 2002, was interpreted as demonstrating only a "mild" anterior compression fracture of T12. Dr. Steven Leonard, the radiologist performing the x-ray study on May 8, 2002, was of the opinion that the observed T12 vertebral compression fracture was recent or "acute". He also noted mild compression fractures at T8, T11, and L1. However, he also stated that he is uncertain whether compression fractures are "acute or chronic". He recommended a CT scan for further evaluation of these compression fractures.

The requested CT scan of the claimant's thoracic spine was performed later on May 2002. This scan was interpreted by Dr. Brigid M. Gerety, as showing only mild compression deformities of T8, T12, T11, and L1. This study also failed to show any indications that these fractures were recent or "acute". The interpretation of this study is essentially the

same as the prior MRI on March 22, 2002.

In summary, the claimant has presented numerous reports and records, dealing with his initial treatment at the St. Francis Medical Center, many of which have little or no relevance to the current issues. More importantly, none of these records contain any specific diagnosis of the nature of the claimant's admittedly compensable lower back injury or identify any particular physical cause for his back complaints. They simply classify the claimant's complaints as a "back injury", which they attribute to the motor vehicle accident.

Following his release from the St. Francis Medical Center, the claimant consulted his family physician, at the Ouachita Family Practice Clinic. The clinic note of May 9, 2002, states that the purpose of this visit was to "look at and measure the claimant's bruises". This seems a rather unusual reason for seeking medical services. One of the bruises noted was an 8 cm. by 12 cm. bruise on the claimant's buttocks, an area where the claimant voiced or indicated no complaints when seen at the St. Francis Medical Center. However, this was the area of complaint following the March incident. The physical examination conducted at the Ouachita Family Practice Clinic records no complaints involving the claimant's back (particularly in the area slightly above the belt line) and notes no neurological or sensory changes involving the claimant's lower extremities. At that time, a diagnosis was made of a fracture of the claimant's nose and contusions to the right elbow, right shoulder, and buttocks.

The claimant returned for follow up at the Ouachita Family Practice Clinic on May 13, 2002. At that time, complaints, in the form of pain in the area of the claimant's lower back were reported. However, there is no mention of any radicular symptoms involving the claimant's lower extremities. The physical examination performed on that date was negative in regard any neurological findings involving the lower extremities. Again, there is no diagnosis of the nature or etiology of the claimant's lower back complaints, except for "pain, low back".

The claimant was then seen by Dr. Kevin Rudder, an orthopaedic surgeon and his primary treating physician following his low back difficulties in March of 2002. Dr. Rudder noted complaints of pain in the claimant's low back, together with various other portions of his anatomy. Dr. Rudder's physical examination showed:

> "Exam of his spine shows that he does have significant swelling at the lumbosacral junction, more centered to the left with profound pain and tenderness with palpitation in his area. He does have pain and tenderness that radiates down the right leg with deep palpitation in the sciatic notch."

Dr. Rudder also noted that x-rays taken on that date:

> "The lumbar spine shows potential increase in the area of the L5-S1 that looked like it is a potential avulsion fracture. He also has noted disc space with significant decrease in the upper lumbar region."

Based upon the claimant's complaints, his physical examination, and the radiographic studies, Dr. Rudder diagnoses:

> "Low back pain with radiculopathy and swelling."

An MRI study of the claimant's lumbar spine was then performed at Dr. Rudder's request. This study was performed on May 17, 2002, and interpreted by Dr. Charles Horner, a radiologist, as showing:

> "1. Bilateral osseous facet hypertrophy at L4-5, and L5-S1, but no significant central canal stenosis or neural foramina narrowing.
>
> 2. There is no (sic) also mild disc dessication at L5-S1 but no significant disc bulge or herniation."

On May 30, 2002, the claimant again consulted his family physician at the Ouachita Family Practice Clinic, seeking a refill on his pain medication and sleeping pills. The claimant was prescribed Vicodin and Flexeril. Apparently, the claimant sought these medications from his family physician, because of his previous confrontation with Dr. Rudder over possible excessive use of pain medication following the March 2002 incident.

Dr. Rudder had prescribed physical therapy for the claimant's various complaints, including those with his low back. The physical therapy notes indicate that by June 5, 2002, the claimant's back was "feeling better". As a result of physical examination performed on that date, the claimant was noted as experiencing only "mild tenderness" on the right at L4-S1, on palpation of the paraspinal muscles. In the physical therapy note of June 7, 2002, the claimant reported continued improvement with his low back difficulties. On that date, he rated his back pain as a 2 out of 10. In the physical therapy notation of June 10, 2002, the claimant reported that his low back was "excellent". He also related that he was experiencing no more numbness or radicular symptoms involving his lower extremities. Scheduled physical therapy after June 10, 2002, was cancelled and the claimant advised that this treatment modality had been discontinued by his physician.

The claimant had also been seen at the emergency room of the Mena Medical Center for increased complaints involving his right knee after he twisted it stepping out of the shower. However, no complaints were noted involving his lower back and no radicular symptoms were reported. At that time, the claimant was prescribed additional Vicodin for pain.

The claimant was also seen by his family physician at the Ouachita Family Practice Clinic on June 10, 2002. At that visit he voiced complaints of a sore throat and knee pain. Again, there is no mention of any symptoms or complaints involving the claimant's lower back or any radicular symptoms involving his lower extremities. The claimant received an additional prescription for #60 Vicodin, with one refill.

The claimant was seen in follow up by Dr. Rudder on June 19, 2002. At the time of this evaluation, Dr. Rudder records:

> "He (the claimant) says his back is better than it has ever felt.
> He is feeling great."

However, the claimant continued to complain of chronic difficulties involving his right knee. His knee was injected with local anesthetic and the claimant was given prescriptions for

#100 Lorcet to last him til seen in follow up in two weeks.

Initial physical therapy had apparently been discontinued by Dr. Rudder on or about June 7, 2002, but was reinstituted following the claimant's June 19, 2002 visit. The physical therapy prescription form (page 56 of Claimant's Exhibit No. 1) reflects the prior diagnosis of "back/knee pain". However, at the time of the claimant's re-evaluation by the physical therapist, no mention is made of any symptoms or complaints involving his back and none of the physical therapy provided was directed towards this portion of his anatomy. Instead, the claimant's complaints and the resulting treatment involved only his right knee.

The claimant was next seen by Dr. Rudder on July 1, 2002. Again, no mention is made of any complaints involving the claimant's lower back or radicular symptoms involving his lower extremities. The claimant's only complaints were his continuing right knee difficulties.

On August 22, 2002, the claimant was released by Dr. Rudder from further follow up and directed to return only on and as needed basis. Curiously, Dr. Rudder notes that the claimant is not only feeling better, but is no longer taking narcotic pain medication. However, only two days prior, the claimant had obtained from his family physician a prescription for #120 Vicodin with one refill.

After his release by Dr. Rudder, the claimant briefly returned to work for the respondent. However, in less than a week (October 29, 2002), he sought treatment at the emergency room of the Mena Medical Center for complaints of increased right knee pain. This allegedly occurred when his knee "gave out" on him and he fell while climbing into his truck at work. He was seen again at the emergency room of the Mena Medical Center on September 2, 2002, for complaints of severe pain involving his right knee after reinjuring it that morning in the shower. On September 4, 2002, he also returned to Dr. Rudder as a result of his increased knee complaints. However, on each of these visits the claimant

made no complaints of any symptoms involving his back or any radicular symptoms involving his lower extremities.

The claimant was seen by his family physician for continued right knee complaints on September 30, 2002, and received a prescription for another #180 Vicodin HP. Again, there was no mention made of any complaints involving his lower back or any radicular symptoms into his lower extremities.

On October 10, 2002, the claimant returned to his family physician. At this time he was complaining of pain in both of his knees and stating that his left knee had “went out” the day before. He also complained that his back was in “severe pain” and had been “since injury in wreck”. This history of continuous back complaints is clearly contrary to the medical evidence and the claimant’s later testimony. There is no mention of any history of an incident at home when his knee “gave out on him” and he fell, twisting his back with a sudden and immediate onset of severe pain, radicular symptoms, and loss of bladder control. The claimant was given additional pain medication in the form of 10 mg. #90 Methadone tablets to be used in conjunction with the previously prescribed Vicodin.

The claimant was next seen by his family physician at the Ouachita Family Practice Clinic on November 4, 2002. At that time, the claimant only mentioned continued complaints of right knee pain. He was given another 10 mg. #90 Methadone tablets, and another Vicodin HP #160, with instructions that these were to last him until December 10, 2002.

Although the claimant testified that he returned to the Mena Hospital emergency room after the October fall at home and reoccurrence of his back symptoms, the medical record shows that his next visit at the facility occurred on November 23, 2002. At that time, the claimant was complaining of redness and swelling in his lower extremities with an onset of approximately one week, but which had become severe that night. No mention was made of any symptoms or complaints involving the claimant’s lower back or any radicular

symptoms involving his lower extremities. He did indicate that he had been recently seen and treated by a doctor for a lower back injury resulting in a motor vehicle accident. He received an injection of Demerol and Phenergan, and was given a prescription for #20 Percocet.

The claimant returned to the emergency room of the Mena Hospital on November 25, 2002. At that time, he continued to complain of swelling or edema in his feet and lower extremities, and related that his back was "really hurting too". He received an additional prescription of pain medication, in the form of Oxycodone 5 mg. #30. Again, no mention is recorded of the recent reoccurrence of his back symptoms, such as that described in his testimony.

On December 1, 2002, the claimant again reappeared at the emergency room of the Mena Medical Center complaining of back pain in the L5-S1 area. He again indicated that his back complaints were chronic and had started with the motor vehicle accident on May 8, 2002. Again, no mention was made of the reoccurrence as described in his testimony. Additional pain medication was provided in the form of Duragesic patches.

On December 5, 2002, the claimant returned to the Ouachita Family Practice Clinic. At that time he complained of symptoms in the form of back pain, knee pain, losing control of his bladder, and swelling in his feet. A physical examination of the claimant revealed that his reflexes in his lower extremities were equal, and that there were no sensory/motor/coordination changes. He did exhibit positive straight leg raising on the right side, paraspinal tenderness on palpitation, decreased rotation and extension of the lumbar spine, and some incontinence with exertion. Based upon the claimant's complaints and the physical examination, his family physician diagnosed not only low back pain, but also made a "new" diagnosis of a herniated disc at L5-S1. The claimant was again provided with a plethora of pain medication, including Oxycontin 40 mg. #60, Phenergan 25 mg. #120, and Vicodin HP #160.

Following the entry of an order of change of physicians, the claimant was seen by Dr. James Mulhollan, an orthopaedic surgeon and knee specialist in Little Rock, Arkansas. Dr. Mulhollan's initial evaluation was on December 10, 2002. At the time of this evaluation, Dr. Mulhollan recorded a history of back pain since the motor vehicle accident on May 8, 2002. He further noted:

> "He (the claimant) began to use crutches, which caused his back to begin to hurt again."

However, there is no history of any reoccurrence of back pain or symptoms similar to that described by the claimant in his testimony. In his evaluation, Dr. Mulhollan did not observe any findings to indicate that the claimant's back difficulties were the result of a herniated disc or were amendable to surgical intervention. His only recommendation for the claimant's subjective complaints involving his back was an evaluation by a pain management specialist.

On December 16, 2002, Dr. Belinda Zinke, the claimant's family physician at the Ouachita Family Practice Clinic, authored a report reaffirming her diagnosis of a herniated lumbar disc presumably suffered at the time of the motor vehicle accident on May 8, 2002. She further opined that the claimant's reported back and radicular difficulties required further evaluation and treatment, including an EMG of the lower extremities to assess the claimant's subjective complaints of leg numbness and pain.

On December 20, 2002, the claimant returned to the emergency room of the Mena Medical Center. At that time, a history was recorded of lower back pain since the motor vehicle accident of May 8, 2002. Complaints of right upper thigh numbness and "losing control of bladder again" were also noted. A diagnosis was made of chronic low back pain due to degenerative disc disease. Again, no mention is made of the reoccurrence of these difficulties, such as that described by the claimant as occurring in October of 2002.

On January 19, 2003, the claimant was again seen at the emergency room of the Mena Medical Center. This time a history of an L5-S1 fracture on May 8, 2002, was

recorded with complaints of a recent "flare up" of pain in his right knee and back. These records further indicate that the claimant related the following history of this "flare up":

> "Fell today 'knee went out and twisted back' abrasion to right knee."

This is the first mention of any sudden onset of recurrent back difficulties similar to that described by the claimant in his testimony as occurring in October of 2002. This episode of difficulties was diagnosed as being in the form of a lumbar strain and a sprain of the right knee. Again, the claimant received an injection of Demerol and Phenergan, and was given a prescription for Vicodin.

On February 7, 2003, the claimant returned to his family physician, reporting that his pain was getting worse every day. He related complaints that both legs were numb from his back to the knee and that the right leg from the knee to the foot felt like it was "on fire". Finally, he indicated that he was still having trouble controlling his bladder "off an on". The physical examination performed on the claimant again showed equal reflexes with no sensory/motor/coordination changes and no other objective findings to substantiate the claimant's extensive subjective complaints. The claimant was given another Oxycontin 40 mg. #60 and Vicodin HP #160.

On 2-18-2003, the claimant was back at his family physician with complaints of increasing pain that was not being controlled by the medication he had been given. He was continuing to complain of incontinence, and the new symptom in the form of the inability to have an erection. However, his physical examination again revealed no objective findings to support such significant and varied subjective complaints. The claimant was directed to accelerate or increase his intake of Oxycontin and a prescription for additional tablets was given. The medication Lexapro was also added by providing him with appropriate samples.

On March 4, 2003, the claimant again returned to his family physician, indicating that he was "feeling better". He was given another prescription for #120 Oxycontin 40 mg.

and #90 Vicodin HP.

After consideration of all the evidence presented, it is my opinion that the claimant has failed to prove by the greater weight of the credible evidence that the current episode of his back difficulties, which he contends began in October of 2002, are in any way causally related to the compensable injury of May 8, 2002. The greater weight of the credible evidence presented fails to prove that these difficulties reflect either a continuation or "reoccurrence" of the initial compensable injury to his lower back on May 8, 2002. The greater weight of the evidence also fails to prove that these complaints represent a "compensable consequence" of his compensable right knee injury. In fact, I have serious doubts concerning the actual existence of the lower back and radicular difficulties, which the claimant contends that he has been experiencing since October of 2002.

The greater weight of the evidence shows that the claimant's compensable low back injury on May 8, 2002, was relatively minor in nature. According to the initial medical and the claimant's initial treating physicians and the claimant's own testimony, the symptoms he experienced with his lower back, following the motor vehicle accident on May 8, 2002, rapidly resolved following a brief course of conservative treatment. By June 10, 2002, the claimant was asymptomatic in regard to any lower back difficulties. All of the evidence, including the claimant's own testimony, further shows that he continued to be asymptomatic, in regard to back or radicular complaints, until October 10, 2002.

Although the medical evidence contains objective findings of physical defects involving various thoracic and lumbar vertebra, the medical evidence further shows that these various physical defects were either degenerative in nature or, at least, were not the result of any "acute" or recent injury occurring on May 8, 2002. The greater weight of the medical evidence establishes that the claimant's compensable lumbar injury on May 8, 2002, was in the form of a simple muscle strain or sprain.

The various radiographic studies performed on the claimant, immediately following the May 8, 2002 accident, do not describe any herniated disc, particularly one at L5-S1. Thus, if the claimant, in fact, actually has such a condition (as diagnosed by his family physician), it could not have been caused by the motor vehicle accident on May 8, 2002. If the claimant's back and radicular difficulties since October of 2002, are actually the result of such a herniated disc, this herniated disc would be the result of a "new" and subsequent injury, rather than the admittedly compensable injury of May 8, 2002.

However, it is the claimant's contention that even if his lower back and radicular difficulties, beginning in October of 2002, are the result of a "new" injury, which occurred subsequent to the compensable injury of May 8, 2002, this new injury was caused by the claimant's right knee "giving way", which in turn was due to the compensable right knee injury of May 8, 2002. Thus, he argues that this "new" back injury would represent a "compensable consequence" of the compensable right knee injury.

However, the only direct evidence presented by the claimant to relate any "new" physical injury to his lower back to the admittedly compensable right knee injury, is his own testimony. This is his testimony that he suffered a sudden and immediate onset of severe symptoms, involving his lower back and radicular symptoms involving his lower extremity and bladder, contemporaneous with a fall and twisting of his torso that occurred when his injured right knee "gave out on him" in October of 2002.

It is well established that the testimony of a party is never considered uncontradicted. However, this does not mean that such testimony can be arbitrarily disregarded. If such testimony is credible, it may be sufficient, in and of itself, to prove any fact it is legally competent to address.

Undoubtedly, the claimant's testimony would be legally competent to prove the actual occurrence of a fall and twisting of his torso in October of 2002. His testimony would also be legally competent to prove that this fall occurred when his right knee "gave way".

Finally, his testimony would be legally competent to prove a close temporary relationship between this fall and the onset of symptoms in the form of pain in his lower back, radicular symptoms involving his right leg, and loss of bladder control. However, based upon the evidence presented, I simply do not find his testimony to be sufficiently credible to prove these facts.

First, as noted previously in this Opinion, his testimony concerning the occurrence of this incident is not supported by, and in some instances, is directly contradicted by essentially all of the various histories which the claimant gave when seeking medical treatment for his current episode of back difficulties. There is simply no logical reason that the claimant would have failed to relate this incident to every physician from which he sought medical treatment for his current episode of back difficulties. It is impossible to believe that, if the claimant had related such an incident, all of these various physicians and medical providers would have failed to record such an obvious medically relevant piece of information.

It further appears that the claimant's testimony and his subjective complaints are also the only direct evidence presented to prove that he is currently experiencing symptoms with his back and radicular symptoms involving his lower extremities and bladder. One would logically expect that such severe and extensive subjective symptoms and complaints, particularly those of a radicular or neurological nature, would also produce "objective" findings that would be readily apparent on physical examination, such as abnormal reflexes, muscle atrophy, muscle spasms, etc.

However, the magnitude and nature of the claimant's subjective complaints is inconsistent with the various findings noted on numerous physical examinations, particularly those by his own family physician. As previously indicated, all of the physical examinations of the claimant's family physician, particularly those for his back pain and radicular symptoms, start off with the observation that the claimant appears in "no acute

distress". Repeated basic neurological testing is consistently indicated to be within normal limits. There is no observation of any recorded objective physical findings, such as muscle atrophy, abnormal reflexes, or muscle atrophy.

As the claimant has failed to prove the existence of a causal relationship between any episode of lower back and radicular difficulties, purportedly beginning in October of 2002, and either his admittedly compensable low back injury, or his compensable right knee injury, also sustained on that same date, his current episode of low back difficulties would not constitute a reoccurrence or continuation of his admittedly compensable low back injury or a compensable consequence of his compensable right knee injury. Thus, these difficulties would not be "compensable", and his the claimant would not be entitled to any benefits under the Act for his current episode of low back difficulties. His request for such benefits must be denied.

II. ADDITIONAL TEMPORARY TOTAL DISABILITY BENEFITS FROM SEPTEMBER 8, 20002 THROUGH A DATE YET TO BE DETERMINED AS A RESULT OF THE CLAIMANT'S ADMITTEDLY COMPENSABLE RIGHT KNEE INJURY

The only remaining issue concerns the claimant's entitlement to additional temporary total disability benefits, as a result of his admittedly compensable right knee injury. The burden rests upon the claimant to prove his entitlement to such benefits. As this compensable injury is to a portion of the claimant's body that is scheduled under Ark. Code Ann. §11-9-521, his entitlement to temporary total disability benefits is controlled by subdivision (a) of this section. This subdivision provides for the payment of temporary total disability benefits until the claimant returns to work or his healing period from the effects of his compensable scheduled injury has ended, whichever occurs sooner.

The evidence presented reveals that the claimant has not "returned to work" during the period for which he now seeks additional temporary total disability benefits. Thus, it becomes necessary to determine if his healing period from the effects of his compensable

scheduled right knee injury have ended.

The duration of the healing period is a medical question that must be resolved upon the basis of the greater weight of the medical evidence presented. The healing period continues until the claimant has achieved the maximum benefit of time and medical treatment in the improvement or resolution of the actual physical damage caused by the compensable injury. Once this underlying physical damage resolves or becomes stabilized and nothing further in the way of time or medical treatment can be reasonably expected to improve the level of healing achieved, then the healing period ends. The mere continuation of medical treatment intended only to provide symptomatic relief of chronic symptoms is not sufficient, in and of itself, to extend the healing period.

Dr. Rudder, the claimant's primary treating physician for his compensable knee injury, opined that the claimant's right knee injury had reached maximum medical improvement by the office visit on August 22, 2002. On the August 22, 2002, visit no erythema or swelling of the right knee was noted. Dr. Rudder indicated that this was the first time that these symptoms had been absent on examination, since the claimant's compensable injury.

However, within ten days of this visit, the claimant reported two additional aggravations to his right knee. The first of these allegedly occurred when his knee "went out" on him when he was climbing into his truck at work on August 29, 2002. The second of these incidents allegedly occurred when he fell in the shower on September 2, 2002. Again, the claimant contended that his knee "gave away", causing him to fall. However, when the claimant was seen by Dr. Rudder on September 4, 2002, his physical examination revealed no effusion or swelling of the knee, and no instability. A follow up was scheduled by Dr. Rudder for September 19, 2002, but this appointment was cancelled by the claimant.

The respondents apparently terminated the claimant's temporary total disability benefits on or about September 7, 2002. Shortly thereafter, the claimant was complaining of difficulties with both of his knees, to the extent he required a wheelchair, and his back difficulties reappeared.

After obtaining a change of physicians, the claimant's right knee difficulties were evaluated and treated by Dr. James S. Mulhollan, an orthopaedic surgeon and knee specialist. The only objective finding noted by Dr. Mulhollan, was osteopenia of the right patella, which Dr. Mulhollan attributed to a lack of use of the right leg. Otherwise, the x-rays of the claimant's knee were normal. Dr. Mulhollan prescribed an exercise program and electrical stimulator to assist the claimant in regaining the strength in his right leg and resolving the osteopenia.

After this initial visit with Dr. Mulhollan, the claimant was also seen on various occasions by his family physician and at the emergency room of the Mena Medical Center. However, it is appears that the primary focus of these visits was the claimant's alleged recurrent back problems and to obtain narcotic medication for his chronic pain complaints.

The claimant was again seen by Dr. Mulhollan on January 7, 2003. At that time, he advised Dr. Mulhollan that he was using the electrical stimulator two to six times daily. He also advised that he was unable to use two crutches, as advised by Dr. Mulhollan, because this increased his back pain. Again, it appears that the claimant's real purpose for this visit focused on his complaints of back pain.

The claimant continued his series of reported falls with aggravations of his difficulties with his right knee and back. He continued to be repeatedly seen by his family physician and at the emergency room of the Mena Medical Center. However, it appears that the real motivation for these visits was to obtain additional narcotic pain medication, rather than any actual treatment for any physical damage to his right knee. Most importantly, there continued to be a paucity of objective findings to support the finding that

the claimant's extensive complaints of severe pain in his knee and other difficulties with various portions of his anatomy. The only real objective finding noted on any of these visits consists of abrasions involving the claimant's right knee and swelling in both legs.

The claimant's final visit with Dr. Mulhollan appears to have been on March 20, 2003. At that time, the claimant reported that his complaints with his knee were no better. However, x-rays made of the claimant's right knee showed a "very definite improvement in the ossification", which indicated a significant improvement or resolution of his osteopenia and an improvement in the strength of his right leg. Except for a referral to a chronic pain management clinic, Dr. Mulhollan does not indicate that any further treatment for the claimant's right knee difficulties would be medically necessary.

The medical record further shows that the claimant has been relatively non compliant with the treatment modalities provided him for his right knee. Dr. Rudder initially directed the use of a brace on his right knee. The claimant somehow managed to lose this first brace. He was then provided with a second brace by Dr. Rudder. However, the claimant's testimony indicates little, if any, use of this device. He stated that he only used this device when he was "away from home". However, he obviously was not wearing his brace when he returned to work and at the time of the alleged incident when his knee gave way at work on August 29, 2002. The claimant's failure to avail himself of a knee brace seems rather illogical, in light of the continuing severe complaints with this knee.

Dr. Mulhollan's reports indicate that the claimant discontinued the recommended electrical stimulator when the battery allegedly "ran down". There is no indication that the claimant made any attempt to remedy this situation or obtain a replacement battery. Dr. Mulhollan further reports that the claimant contends that he cannot use crutches for ambulation, as recommended by Dr. Mulhollan, because this increases the pain in his back. It is difficult to see any relationship between the use of crutches and any added stress on the claimant's back.

Apparently, the only recommended treatment in which the claimant has wholeheartedly engaged, is the use of narcotic pain medication. In light of the amount of pain medication being taken by the claimant, as reflected by the medical records, another possible cause for the claimant's fall, other than his knee giving way is rapidly apparent. These medical records indicate that the claimant is on occasions taking as many as 7 to 8 Vicodin a day, together with the other narcotic pain medications.

After consideration of all the evidence presented, it is my opinion that the claimant has failed to prove by the greater weight of the credible evidence that he has continued within his healing period from the effects of his compensable right knee injury after September 7, 2002. Thus, he would not be entitled to temporary total disability benefits, after this date for his compensable right knee injury.

The medical evidence does not show any extensive physical damage to the various physical components of the claimant's right knee in the accident of May 8, 2002. At the time of his most recent arthroscopic surgery, no damage was observed to any of the supporting ligaments or tendons. The only observed damage was to the cartilagenous covering of the bone on the femoral condyle with an isolated solitary chondral defect. These were all surgically corrected on July 3, 2002. Various radiographic studies of the claimant's right knee have also shown only minor effusion and have been essentially negative. Numerous physical examinations of the knee continue to show no evidence of any instability of the joint. In fact, the medical evidence fails to show any real basis for the claimant's repeated episodes of his knee giving way or his continued severe pain.

Most importantly, the medical evidence indicates that the only appropriate treatment he has required for his right knee after September 7, 2003, has been for symptomatic treatment of his chronic pain, and regaining strength in the muscles and bones of his right leg, lost from disuse. I do not find treatment for these symptoms to be sufficient to extend the claimant's healing period for his compensable right knee injury beyond September 7,

2003.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.

2. On May 8, 2002, the relationship of employee-self insured employer-third party administrator existed between the parties.

3. On May 8, 2002, the claimant earned wages sufficient to entitle him to weekly compensation benefits of $321.00 for total disability and $240.00 for permanent partial disability.

4. On May 8, 2002, the claimant sustained a compensable injury to his right knee, nose, and back.

5. There is no dispute over the payment of accrued medical expenses.

6. There is no dispute over the payment of temporary total disability benefits through September 7, 2002.

7. The claimant has failed to prove by the greater weight by the credible evidence that his current episode of low back difficulties, beginning in October of 2002, or causally related to his initial compensable low back injury of May 8, 2002, or any other injury he sustained on that date. Thus, his current episode of low back difficulties would not constitute either a reoccurrence or progression of his initial compensable low back injury or a compensable consequence of his compensable right knee injury. He would not be entitled to any benefits under the Act for his current episode of low back difficulties, including either medical services or temporary disability benefits.

8. The claimant has failed to prove that he is entitled to additional temporary total disability benefits from September 8, 2002 through a date yet to be

determined for either his compensable back injury or compensable right knee injury. Specifically, he has failed to prove by the greater weight of the credible evidence that he continued within his healing period from the effects of either of these compensable injuries after September 7, 2002.

9. The respondents have controverted the claimant's entitlement to any medical services or temporary total disability benefits as a result of his current episode of low back difficulties, beginning in October of 2002. The respondents have also controverted the claimant's entitlement to any additional temporary total disability benefits for his compensable right knee injury after September 7, 2002.

ORDER

Based upon my foregoing findings and conclusions, I have no alternative but to deny the claimant's request for medical benefits and temporary total disability benefits associated with his current episode of low back difficulties, beginning in October of 2002.

Based upon my foregoing findings and conclusions, I have no alternative but to deny the claimant's request for additional temporary total disability benefits for his compensable right knee injury beginning on September 8, 2002.

IT IS SO ORDERED.

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MICHAEL L. ELLIG
Administrative Law Judge